

OCA 87-3104  
ACTION

**OFFICE OF CONGRESSIONAL AFFAIRS**

**Routing Slip**

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	XXX	
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. <span style="border: 1px solid black; padding: 0 20px;"> </span>		X
12.		

SUSPENSE 24 July 87  
Date

Action Officer	<span style="border: 1px solid black; padding: 0 50px;"> </span>
Remarks:	<span style="border: 1px solid black; padding: 0 50px;"> </span>

*Action Completed*  
*OCA 87-322*  
*7-29-87*

21 July 87  
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OCA 87-3104  
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**OFFICE OF CONGRESSIONAL AFFAIRS**  
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	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	XXX	
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5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
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SUSPENSE

24 July 87  
Date

Action Officer

Remarks:

21 July 87  
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**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

July 20, 1987

**LEGISLATIVE REFERRAL MEMORANDUM**

O/CONGRESSIONAL AFFAIRS

87-3104

**SPECIAL**

**TO:** SEE ATTACHED DISTRIBUTION LIST

**SUBJECT:** Department of State draft bill to amend the Immigration and Nationality Act concerning grounds for exclusion and deportation of aliens.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than July 24, 1987

(NOTE -- This legislation has been drafted in response to a June 23 House Judiciary Immigration subcommittee hearing on H.R. 1119 at which State testified that concerned agencies were working to develop a suitable proposal concerning grounds for excluding aliens.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

  
James C. Kirk for  
Assistant Director for  
Legislative Reference

**Enclosure**

cc:	A.B. Culvanhouse, Jr.	Tara Treacy	Barry Clendenin	Jim Nix
	Jack Carley	Tracy Davis	Kevin Scheid	
	John Cooney	Robert Fishman	Norine Noonan	

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National Security Council		
Central Intelligence Agency		

State

**DRAFT**

A BILL

To amend the Immigration and Nationality Act.

Be it enacted by the Senate and the House of  
Representatives of the United States of America in Congress  
assmbled,

Section 1. Section 212(a)(9) of the Immigration and  
Nationality Act is amended to read as follows:

Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense); except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of application for admission to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the application for a visa or other documentation, and for admission, to the United States. An alien who would be excludable because of the conviction of an offense for which the sentence actually imposed did not exceed a term of imprisonment in excess of six months may be granted a visa and admitted to the United States if otherwise admissible: Provided, That the alien has committed only one such offense

Section 2. Section 212(a)(11) is amended to read as follows:

Aliens who practice polygamy;

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**Section 3.** Section 212(a)(23) is amended to read as follows:

(A) Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(B) Any alien who the consular officers or immigration officers know or have reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator or colluder with others in the illicit trafficking in any such controlled substance;

**Section 4.** Section 212 (a)(27) of the Immigration and Nationality Act is amended to read as follows:

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which could endanger the safety or security of the United States, or whose entry could cause potentially serious adverse foreign policy consequences.

**Section 5.** Section 212(a)(28)(A), (B), (C), (D), (E), (G), and (H) are repealed; sections 212(a)(28)(F) and 212(a)(28)(I) are redesignated as sections 212(a)(28)(A) and (B), and are amended to read as follows:

(28)(A) Aliens who advocate or teach, or who have ever advocated or taught, or who are members of or affiliated with, or who have ever been members of or affiliated with, any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the

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Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the organizing, abetting or participating in acts of violence with extreme indifference to the risk of causing death or serious bodily injury to individuals not taking part in armed hostilities, including activities that violate laws implementing international agreements for the prevention of terrorism.

(B) Any alien who is within any of the classes described in subparagraph (A) of this paragraph because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or (ii)(a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii)(a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and the ideology of such party or organization or the section,

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subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;

**Section 6.** Section 212(a)(29) of the Immigration and Nationality Act is amended to read as follows:

(29) Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry, (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, or (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means;

**Section 7.** Section 212(a) of the Immigration and Nationality Act is amended to add the following subsection:

(34) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities the purpose of which is to violate, circumvent or evade United States laws, including laws prohibiting or restricting the export from the United States of goods, technology or other sensitive information.

**Section 8.** Section 212(a) of the Immigration and Nationality Act is amended to add the following subsection:

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(35) Aliens who are representatives of purported labor organizations in countries where such organizations are in fact instruments of a totalitarian state.

**Section 9.** Section 212(h) of the Immigration and Nationality Act is amended to read as follows:

Any alien who is excludable from the United States under paragraphs (9), (10), (12), or (23)(A) of subsection (a) who (A) is the spouse or child, including a minor unmarried adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence or (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence (1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawful resident spouse, parent or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and (2) if the Attorney General in his discretion, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa and for admission to the United States.

**Section 10.** Section 212 of the Immigration and Nationality Act is amended to add at the end the following new subsection:

(m) An alien who would be ineligible to receive a visa, or who would be excludable, under the provisions of paragraph (9), (10), (12), (19), or (23)(A) of subsection (a), may be granted a visa and admitted to the United States, if otherwise admissible, if it shall be established to the satisfaction of the Attorney General that --

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(1) the act or acts rendering such alien ineligible to receive a visa, or excludable, under such paragraph or paragraphs were committed more than 10 years before the date of application for a visa;

(2) any conviction in a court of law for the commission of such act or acts occurred more than 10 years before the date of application for a visa;

(3) any period of confinement resulting from a conviction for the commission of such act or acts terminated more than 10 years before the date of application for a visa; and

(4) there is a clear record of the alien's rehabilitation during the 10-year period immediately preceding the date of application for a visa.

**Section 11. Section 241(a)(6) of the Immigration and Nationality Act is amended to read as follows:**

(6) is or at any time has been, after entry, a member of the following class of aliens:

(28)(A) Aliens who advocate or teach, or who have ever advocated or taught, or who are members of or affiliated with, or who have ever been members of or affiliated with, any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the

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Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the organizing, abetting or participating in acts of violence with extreme indifference to the risk of causing death or serious bodily injury to individuals not taking part in armed hostilities, including activities that violate laws implementing internationally agreements for the prevention of terrorism.

**Section 12.** The "McGovern Amendment," section 21 of Public Law 95-105 (22 U.S.C. 2691), is repealed.

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**PROPOSED ADMINISTRATION BILL: SECTION-BY-SECTION ANALYSIS\*/**

**Section 1.** Section 212(a)(9) of the Immigration and Nationality Act is amended to read as follows:

Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense) [or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime]; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of application for admission to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the application for a visa or other documentation, and for admission, to the United States; An[y] alien who would be excludable because of the conviction of an offense for which the sentence actually imposed did not exceed a term of imprisonment in excess of six months [a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of Title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense for which a sentence not to exceed one year's imprisonment that is classifiable as a misdemeanor under the provisions of section 1(2) of Title 18, by reason of the punishment which might have been imposed upon him,] may be granted a visa and admitted to the United States if otherwise admissible: Provided, That the alien has committed only one such offense; [, or admits the commission of acts which constitute the essential elements of only one such offense]

The Administration proposes that section 212(a)(9) be amended in two respects. First, all references to "admission" should be eliminated. Under the current section an alien is excludable if convicted of a crime involving moral turpitude, or if the alien admits to the commission of acts which constitute the essential elements of a crime involving

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\*/ The language in square brackets is to be deleted. The underscored language is new.

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moral turpitude. Very few aliens voluntarily admit to U.S. consular officers the commission of acts which constitute the essential elements of such a crime. Consequently, few findings of ineligibility arise under the admission provision. Furthermore, to ensure uniformity and equity in the application of 212(a)(9) the Department of State has established complex procedures to be followed by consular officials in taking such admissions. Although the occasion for taking such admissions arises only infrequently, it is a very time consuming exercise. This amendment would facilitate administration of this section.

Additionally, it is strongly recommended that the amendment of 212(a)(9) made in section 220 of Pub. L. 90-473, the Comprehensive Crime Control Act of 1984, be incorporated. This amendment was originally to take effect on November 1, 1986, but its effective date was delayed until November 1, 1987 by section 4 of Pub. L. 99-217, the Sentencing Reform Amendments Act of 1985. By enacting this amendment, the administration of the so-called petty offense exemption in 212(a)(9) would be greatly facilitated. In cases where aliens have committed only one crime involving moral turpitude, consular officers would look only to the sentence actually imposed to determine whether the exemption would apply. Under current law, the consular officer must first determine whether the offense is a felony or misdemeanor, and then examine the sentence actually imposed to determine whether the petty offense exemption applies. The intermediate step is often complicated and time consuming, especially when foreign statutes are involved.

**Section 2.** Section 212(a)(11) is amended to read as follows:

Aliens who [are polygamists or who] practice polygamy [or advocate the practice of polygamy];

This section applies only to immigrants, pursuant to section 212(d)(1). This proposal limits this exclusion to aliens who are practicing polygamists, and who indeed have more than one spouse. The advocacy of the philosophy of polygamy is not illegal, and this part of the current subsection should, therefore, be repealed.

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**Section 3.** Section 212(a)(23) is amended to read as follows:

**(A) Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); [or]**

**(B) Any alien who the consular officers or immigration officers know or have reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator or colluder with others in the illicit trafficking in any such controlled substance;**

The second clause of this section renders ineligible persons who are traffickers. The scope of this section is however, currently too limited by the definition of "trafficker". Many persons who facilitate trafficking of drugs by money laundering, providing air strips, and other means may not fall within the traditional definition of "trafficking". In order to ensure that such aliens are ineligible for admission under section 212(a)(23), the statute should be amended.

The effect of this amendment is to render ineligible persons who actively and knowingly facilitate the trafficking of illegal drugs, even though they might not themselves fall within the strict definition of "trafficker".

The reason to believe standard must be maintained. Great pressure is exerted on consular officers to find aliens ineligible when records contain insufficient facts or merely constitute suspicion. Statements in the legislative history supporting the reason to believe and the reasonable man standard would be useful. Such statements would provide an excellent defense to political and other pressures to use a lower standard of proof.

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**Section 4.** Section 212 (a)(27) of the Immigration and Nationality Act is amended to read as follows:

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which could [be prejudicial to the public interest, or] endanger the [welfare,] safety or security of the United States, or whose entry could cause potentially serious adverse foreign policy consequences.

Section (27) would be amended to eliminate the vaguest and broadest grounds for exclusion ("welfare" and "public interest") while explicitly preserving the more specific and more significant authority to exclude persons on foreign policy grounds. The Administration strongly believes that the Executive must have the authority to deny visas to persons whose admission to the United States could cause potentially serious adverse internal security or foreign policy consequences. This section is infrequently used and then under extremely close scrutiny by policy level officials of the Executive Branch. Visa denials under subsection (27) solely for foreign policy reasons are made only after careful deliberation at the highest levels of the State Department. Department of State regulations require that consular officers solicit an advisory opinion from the Department whenever they have reason to believe that an applicant may be ineligible for a visa under subsection (27). 22 C.F.R. § 41.130(c); Foreign Affairs Manual, Vol. 9 (Visa TL-880, ¶1). Final approval on an advisory opinion to a consular officer on whether the alien is ineligible under 212(a)(27) for foreign policy reasons must be made at the Under Secretary level or higher at the State Department.

The Administration is opposed to the exclusion of any individual solely for reasons of ideology or beliefs. The Administration therefore supports revising subsection (27)'s language in order to avoid any undesirable appearance or unnecessary controversy because of the broad language that presently exists. The proposed legislation tightens the applicable standard for exclusion, but it

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will not change the standard currently authorized to be applied under this section. The proposed language would, by codifying the standard currently applied, make this standard legally required. Appropriate legislative history could confirm that "foreign policy" is not to be used to exclude persons for reasons of ideology alone.

Suggestions have been made that decisions to deny visas on foreign policy grounds should be reviewed by the courts. The Administration opposes that suggestion, as well as any other statutory form of regulation. Foreign policy exclusions are essentially political decisions and should only be made by the branches of government charged with this authority under the Constitution. Furthermore, litigation could force the government to reveal sensitive information to prove its case. Very few cases of visa denials solely on foreign policy grounds are likely to occur. During this Administration an average of only approximately 15 visa denials per year between 1981 and 1986 have been approved on the basis of foreign policy grounds, of which some are reversed on reconsideration. Many such denials are based on specific, time-sensitive factors, and the same individuals are granted visas upon reapplication for subsequent visits. While human error cannot entirely be eliminated, the internal review process within the State Department greatly reduces the chances that erroneous judgments will occur.

An additional method for accountability exists, moreover, that is relatively informal, and far more appropriate and effective than judicial review. Congress has ample power of legislative oversight to review Executive decisions in this area. The State Department is frequently called upon by Congress to account for visa determinations, and that process should be the exclusive one in these sensitive cases, involving as they do issues peculiarly unsuited to judicial consideration.

Section 5. Section 212(a)(28)(A), (B), (C), (D), (E), (G), and (H) are repealed; sections 212(a)(28)(F) and 212(a)(28)(I) are redesignated as sections 212(a)(28)(A) and (B) and are amended as follows:

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(28)(A) Aliens who advocate or teach, or who have ever advocated or taught, or who are members of or affiliated with, or who have ever been members of or affiliated with, any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the organizing, abetting or participating in a wanton or indiscriminate act of violence with extreme indifference to the risk of causing death or serious bodily injury to individuals not taking part in armed activities, including activities that violate laws implementing internationally recognized acts of terrorism.

(B) Any alien who is within any of the classes described in subparagraph[s] (A) [(B), (C), (D), (E), (F), (G), and (H)] of this paragraph because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or (ii)(a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or

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affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii)(a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and the ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;

Almost all of subsection 212(a)(28) and the so-called McGovern Amendment, 22 U.S.C. 2691, would be repealed in this proposed legislation. The Administration supports the elimination of the general exclusion of aliens based solely on their membership in or affiliation with proscribed organizations or on their belief in certain doctrines. Thus, the proposed legislation repeals subsections (28)(A), (B), (C), (D), (E), (G) and (H). Because the proposed legislation eliminates the grounds of ineligibility upon which the McGovern Amendment is based, section 12 of the proposed legislation also proposes repeal of the McGovern Amendment.

Several features of the current legal regime must be preserved. First, subsection (28)(F) would be retained, as new subsection (28)(A), in order to preserve the Executive's current authority to exclude members or affiliates of terrorist organizations and those who advocate or engage in the use of violence for political ends. Retention of this language, or its equivalent, is important to insure that the provision cover, not only the actual gunmen and bombers, but also their accomplices and supporters. The current provision describes a series of violent political acts, and aliens who "advocate or teach" these acts, or who are members or affiliates of organizations that do so; all are excludable.

This provision on terrorists and others who use violence for political ends differs in purpose from sections 212(a)(27) and (29), which apply only to those

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aliens who the consular officer knows or has reason to believe would engage in some harmful act after entering the United States or whose entry or presence could cause potentially serious adverse foreign policy consequences. Section 212(a)(28)(A), on the other hand, is directed also to the alien's past association with terrorist organizations or past involvement in terrorist activities, without regard to the purpose of the alien's currently proposed travel to the United States or whether he intends to engage in terrorist-related activities while here. The Administration believes that the alien's past terrorist conduct and associations cannot responsibly be ignored. Proposed subsection (28)(B) retains the Executive's current authority to waive an alien's past membership in or affiliation with a terrorist organization under very narrow circumstances, e.g., extreme youth, coercion, defection.

With respect to subsection (28)(A)(v), the relevant international agreements and implementing laws include, inter alia: The Foreign Intelligence Surveillance Act (50 U.S.C. §1801); The Diplomatic Security Act (Pub. L. 99-391); The Convention on Offenses and Certain Other Acts Committed on Board Aircraft (The Tokyo Convention), 20 U.S.T. 2941, implemented by Pub. L. 93-366; Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague Convention), 22 U.S.T. 1641, implemented by Pub. L. 93-366; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (The Montreal Convention), 24 U.S.T. 564, implemented by Pub. L. 98-473; International Convention against the Taking of Hostages, implemented by Pub. L. 98-473; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, 28 U.S.T. 1975, implemented by Pub. L. 94-467.

Second, proposed subsection(28)(A) would preserve the Executive's current ability to exclude some PLO representatives, members and affiliates.

Third, because of the manner in which current sections 212(a)(22) and 313 operate in tandem, the Administration's proposal will not affect the government's ability to exclude intending immigrant aliens on certain specified ideological grounds.

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In addition, provision should be made to protect sensitive technological information and other national security interests. At present, when section (28) ineligibility is waived under INA § 212(d)(3), the Executive may impose conditions on visas to reduce the chance that the visits of Communist bloc scientists, officials and others will result in the transfer of sensitive technology or threaten national security. Repeal of section (28) would eliminate our authority to impose conditions in such situations. The proposed language of new subsection (34) discussed below, is intended to preserve and enhance the Executive's current authority to safeguard the sensitive technology and other national security interests of the United States.

**Section 6.** Section 212(a)(29) of the Immigration and Nationality Act is amended to read as follows:

(29) Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry, (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, or (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means; [or (C) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950;]

Section (29) excludes aliens who the consular officer of the Attorney General knows or has reason to believe "probably would" engage in espionage, sabotage or subversion or attempt to overthrow the government. This section includes some broad language, but ample coverage is necessary and appropriate with respect to legitimate concerns of internal security. For this reason, and because it has been carefully applied, the section has not been controversial. The section should also be amended to repeal the exclusion of persons likely to "join, affiliate with, or participate in the activities of any organization

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which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950." This change reflects the fact that section 7 of the Subversive Activities Control Act was repealed in 1968.

**Section 7.** Section 212(a) of the Immigration and Nationality Act is amended to add the following subsection:

(34) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities the purpose of which is to violate, circumvent or evade United States laws, including laws prohibiting or restricting the export from the United States of goods, technology or other sensitive information.

Certain aliens from communist countries are routinely found ineligible under existing law for visas under subsection (28)(C), and then their ineligibility is routinely waived. Because the waiver provisions of the INA [sections 212(d)(3)(A), (d)(6)] provide discretion to place conditions on such waivers, these provisions have been used temporally or geographically to restrict the alien's activities in the United States in order to reduce or eliminate the likelihood that those activities will result in the transfer of sensitive technology. Repealing present subsection (28)(C) will eliminate the ability to grant such conditional waivers. Similarly, existing law does not expressly empower consular officers to deny visas on the grounds that the alien intends to visit the United States for the purpose of violating our laws. Although we currently employ a method of denying visas in such cases under INA § 214(b), we believe that it would be in the national interest for Congress to provide specific authority for such denials. The new section (34) would also enable the Attorney General to issue restrictive waivers under section 212(d)(3) to aliens who would otherwise be excludable under section (29).

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To cover the gap in regulatory authority in this area, after section (28)(C) is repealed, the Administration proposes new subsection (34). The proposed language of this new subsection is intended to provide the Executive with the ability not only to exclude aliens in order to protect sensitive technology, but to place certain reasonable conditions on the scope of aliens' activities within the U.S. so as to limit their ability to engage in the transfer of technology or the violation of other laws. In addition, section (34) will enable the Executive to exclude or condition waivers for all aliens who may pose a threat to sensitive technology or to internal security generally, not only those who are members of or affiliated with certain proscribed organizations, as is the case under the existing law.

The language of proposed subsection (34) will safeguard technological information that is already protected by law, specifically: The Atomic Energy Act of 1954 (Pub. L. No. 83-703); The Nuclear Non-Proliferation Act of 1978 (Pub. L. No. 95-242); section 5 of the Export Administration Act of 1978 (50 App. U.S.C. § 2404); section 38 of the Arms Export Control Act (22 U.S.C. § 2278); and any amendments thereto. It will also protect technology that is covered by subsequent, similar laws.

The "knows or has reason to believe" language in proposed subsection (34) is intended to reflect a standard whereby the consular officer or the Attorney General has a reasonable suspicion that the alien seeks to enter solely, principally or incidentally for the purpose of violating U.S. laws. For example, the standard does not require that the evidence be sufficient to support an indictable offense.

**Section 8.** Section 212(a) of the Immigration and Nationality Act is amended to add the following subsection:

(35) Aliens who are representatives of purported labor organizations in countries where such organizations are in fact instruments of a totalitarian state.

Repeal of subsection (28)(C) will eliminate the Executive's current ability to exclude aliens who are representatives of Communist labor organizations. In order to continue exclusion of such representatives, we

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propose a new subsection (35), to preserve this important power. The new subsection would apply only to official "representatives" of such labor organizations, and not to mere members. Eastern bloc workers would not be excluded on the basis of their presumably involuntary association with a communist labor union.

**Section 9.** Section 212(h) of the Immigration and Nationality Act is amended to read as follows:

Any alien who is excludable from the United States under paragraphs (9), (10), (12), or 23(A) of subsection (a) [or paragraph (23) of such subsection as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana], who (A) is the spouse or child, including a minor unmarried adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence or (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence (1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawful resident spouse, parent or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and (2) if the Attorney General in his discretion, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa and for admission to the United States.

This section amends the INA to expand the ability of the Executive to grant waivers of immigrant visa ineligibility for certain close relatives where such ineligibility would otherwise cause great hardship and the alien's entry would not be contrary to U.S. safety or national security. The Administration believes such an amendment is necessary as a result of recent amendments to section 212(a)(23). The scope

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of this section is extremely broad, and many violations not previously within its purview now result in ineligibility. For example, the language of current subsection (23) may now render permanently ineligible aliens who have been convicted of being in the vicinity of drug use, use of a controlled substance and the possession of drug paraphernalia.

The current waiver provision is clearly inadequate. Because great hardship will result, particularly in immediate relative cases, it is anticipated that extreme pressure will be exerted to have private legislation passed. To avoid such a time consuming and expensive exercise, the proposed legislation expands the 212(h) waiver to apply to all cases falling within the first clause of 212(a)(23) without being limited to those involving a single conviction of possession of marihuana of 30 grams or less.

**Section 10.** Section 212 of the Immigration and Nationality

Act is amended to add at the end the following new subsection:

(m) An alien who would be ineligible to receive a visa, or who would be excludable, under the provisions of paragraph (9), (10), (12), (19), or (23)(A) of subsection (a), may be granted a visa and admitted to the United States, if otherwise admissible, if it shall be established to the satisfaction of the Attorney General that --

(1) the act or acts rendering such alien ineligible to receive a visa, or excludable, under such paragraph or paragraphs were committed more than 10 years before the date of application for a visa;

(2) any conviction in a court of law for the commission of such act or acts occurred more than 10 years before the date of application for a visa;

(3) any period of confinement resulting from a conviction for the commission of such act or acts terminated more than 10 years before the date of application for a visa; and

(4) there is a clear record of the alien's rehabilitation during the 10-year period immediately preceding the date of application for a visa.

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This section proposes broadening relief available to aliens ineligible under certain grounds of exclusion, including conviction for a crime or crimes involving moral turpitude, being sentenced to long terms of imprisonment, and procuring entry by fraud or willful misrepresentation. Relief from such ineligibility is now available only for certain immigrant aliens who have close family relationships and to nonimmigrant aliens for temporary entry. Such relief should be expanded to apply to cases in which the passage of time coupled with evidence that the alien has lived a decent, honorable life during that period, regardless of whether there is a close family relationship with a citizen or permanent resident.

The proposed section allows the alien to apply for relief after ten years from the date of the conviction, relevant event, or completion of any resulting prison term. Grant of the relief is discretionary and would depend on such factors as the nature of the crime or basis for ineligibility, the length of any prison term, and the alien's subsequent conduct. This provision would apply to subsections 212(a)(9), (10), (12), (19), and (23)(A).

Section 11. Section 241(a)(6) of the Immigration and Nationality Act is amended to read as follows:

(6) is or at any time has been, after entry, a member of the following class of aliens:

(28)(A) Aliens who advocate or teach, or who have ever advocated or taught, or who are members of or affiliated with, or who have ever been members of or affiliated with, any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the

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Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the organizing, abetting or participating in acts of violence with extreme indifference to the risk of causing death or serious bodily injury to individuals not taking part in armed hostilities, including activities that violate laws implementing internationally agreements for the prevention of terrorism.

Section 11 amends section 241(a)(6) to conform the statutory grounds for deportability to the changes proposed in section 5, supra.

**Section 12.** The "McGovern Amendment," section 21 of Public Law 95-105 (22 U.S.C. 2691), is repealed.

This section of the legislation proposes repeal of the McGovern Amendment. The Administration supports the elimination of the current general exclusion of aliens based solely on their membership or affiliation with proscribed organizations or on their belief in certain doctrines. Thus, section 2 of the proposed legislation repeals subsections (28)(A), (B), (C), (D), (E), (G) and (H). Because this proposed legislation eliminates the grounds for ineligibility upon which the McGovern Amendment is based, the McGovern amendment should be repealed as surplusage. Elimination of the McGovern amendment will not impede our existing authority to exclude members of the PLO or representatives of communist labor organizations.